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Attorneys for Plaintiffs
OWENS-ILLINOIS, INC.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD M. SKAGGS and
CHARLOTTE M. SKAGGS,
husband and wife,

Plaintiffs,

v.

BORGWARNER MORSE TECH
INC., et al.,

Defendant.

Case No. 2:14-cv-01506-JLR

**DEFENDANT OWENS-ILLINOIS,
INC.'S OPPOSITION TO
PLAINTIFFS' MOTION TO REMAND
[DOC. NO. 7]**

Owens-Illinois, Inc. ("Owens-Illinois"), through its undersigned counsel of record, hereby files this opposition to Plaintiffs' Motion to Remand (Doc. No. 7). In further opposition to Plaintiffs' Motion, Owens-Illinois states as follows:

This Case is Properly in Federal Court as to All Remaining Defendants

1. This matter was removed to federal court pursuant to 28 U.S.C. § 1442(a)(1) on September 30, 2014 by Crane Co. (*See* Doc. No. 1).

2. On October 1, 2014, and before Owens-Illinois had filed its appearance in federal court, Plaintiffs moved to remand this action to state court on the grounds that Crane Co. no longer remained a defendant in this case. (*See* Doc.

1 No. 7).

2 3. The fact that Crane Co., as the original removing party, has been
3 dismissed from this case, however, does not mandate remand to state court. Unlike
4 removal petitions for removal based on diversity jurisdiction, removal pursuant to §
5 1442(a)(1) does not require the joinder of all defendants. *See e.g., Ely Valley*
6 *Mines, Inc. v. Hartford Acc. & Indem. Co.*, 644 F.2d 1310, 1315 (9th Cir. 1981)
7 (“Thus, s 1442 represents an exception to the general rule (under ss 1441 and 1446)
8 that all defendants must join in the removal petition.”); *Howes v. Childers*, 426
9 F.Supp. 358, 359 (E.D. Ky. 1977) (“When a single federal officer timely removes a
10 case to federal court under 28 U.S.C. s 1442(a)(1), the entire case is thereby
11 removed, regardless of whether other defendants, federal officers or not, properly
12 join in the petition for removal. Accordingly, the fact that the petition was untimely
13 as to the other three federal officers is irrelevant.” (internal citations omitted)); *State*
14 *of Alabama v. Jones*, 189 F.Supp. 61, 64 (M.D. Ala. 1960) (The fact that only one
15 of the respondents petitioned for removal to federal court, and other respondents did
16 not join in such petition, did not preclude federal court from acting in action
17 removed from state court, since under such circumstances the removal was effected
18 as to all.)

19 4. Owens-Illinois intends to pursue a federal government contractor
20 defense that entitles it to federal officer jurisdiction pursuant to § 1442(a)(1).
21 Owens-Illinois accordingly opposes Plaintiffs’ motion to remand, as Owens-Illinois
22 has an independent basis for the Court’s exercise of jurisdiction pursuant to §
23 1442(a)(1) notwithstanding Plaintiffs’ dismissal of Crane Co. from this case.

24 5. Remanding this case to state court prior to the Court’s consideration of
25 the applicability of federal officer jurisdiction based on Owens-Illinois’s
26 government contractor defense would be premature. Because Plaintiffs did not
27 provide Owens-Illinois proper notice of the Motion to Remand (discussed *infra.*),
28 Owens-Illinois has not had an opportunity to adequately brief the issue for the

1 Court's consideration. Accordingly, Owens-Illinois requests that the Court enter a
2 briefing schedule to enable the parties time to brief the issue of federal officer
3 jurisdiction as it relates to Owens-Illinois's claims and defenses.

4 **Owens-Illinois Did Not Receive Proper Notice of Plaintiffs' Motion**

5 6. The Certificate of Service attached to Plaintiffs' Motion to Remand
6 certified only that the named defendants had been served "Via ECF" on October 1,
7 2014, before Owens-Illinois had appeared in this case.¹ (See Doc. No. 7-1).
8 Because Owens-Illinois had not yet filed its appearance in this federal action at the
9 time of Plaintiff's' filing, counsel for Owens-Illinois was not yet receiving service
10 of pleadings in this case via the Court's CM/ECF system.

11 7. Plaintiffs' counsel knew that the undersigned counsel represented
12 Owens-Illinois in this matter, however, because the undersigned timely filed an
13 appearance in the state court action prior to removal to federal court.

14 8. Plaintiffs did not serve additional copies of Plaintiffs' Motion to
15 Remand on Owens-Illinois via other means (e.g., U.S. Mail or e-mail).
16 Accordingly, Owens-Illinois did not receive notice of Plaintiffs' Motion to Remand
17 until October 9, 2014, when it was informed of the filing in person by Plaintiffs'
18 counsel.

19 WHEREFORE, Owens-Illinois, Inc. respectfully requests that this Court
20 deny Plaintiffs' Motion to Remand and enter a briefing schedule to enable the
21 parties to address whether this Court retains jurisdiction in light of Owens-Illinois's
22 intention to assert federal officer jurisdiction.

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28 ¹ Owens-Illinois timely filed its appearance on October 3, 2014 (see Doc. No. 16).

1 Dated: October 9, 2014

SCHIFF HARDIN LLP

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3 By: /s/ Stephen M. Copenhaver

4 Stephen M. Copenhaver

5 Attorneys for Defendant

6 OWENS-ILLINOIS, INC.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that I served the attached DEFENDANT OWENS-ILLINOIS, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO REMAND on all counsel of record via the Court's CM/ECF system.

Dated: October 9, 2014

SCHIFF HARDIN LLP

By: /s/ Stephen M. Copenhaver

Stephen M. Copenhaver
Attorneys for Defendant
OWENS-ILLINOIS, INC.

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